



DEPARTMENT OF TRANSPORTATION

MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

3477

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

(Docket No. HM-127; Amdt. No. 173-93)

PART 173—SHIPPERS

Use of Hazardous Materials Packagings Authorized Under Exemptions

As a feature in the exemption procedures (49 CFR 107.101-107.125) which became effective on October 16, 1975 (40 FR 48466), the Materials Transportation Bureau established a means whereby a person who seeks the same administrative relief as the holder of a particular exemption can become a party to that exemption (49 CFR 107.111). The rights, duties and obligations of a party to an exemption are the same as those of the basic holder of the exemption. In addition to this group of persons whose interests are identical to those of a basic exemption holder, there are two other groups of persons whose activities are affected to a lesser extent by certain exemptions which pertain to packagings for hazardous materials. These are (1) persons who purchase and use packagings manufactured by an exemption holder in accordance with that exemption and (2) persons who receive from exemption holder and distribute hazardous materials which have been packaged by the exemption holder in accordance with that exemption. Under the new exemption procedures, the Bureau has been receiving applications to be made "parties" from all three groups.

In the process of evaluating an application for an exemption concerning packaging—whether it concerns a type not previously approved or the use of an approved type for a purpose not previously approved—the Bureau considers the full transportation life of the packaging. Consequently, if the Bureau issues an exemption authorizing the applicant to produce and market a new packaging, any limitations or special conditions which the Bureau has concluded should be imposed on the use of that packaging are expressly stated in the exemption. Similarly, if the Bureau issues an exemption authorizing a shipper to package a hazardous material in a packaging that is at variance with what is required by the regulations, the exemption includes a statement as to whether or not the hazardous materials may be reshipped in the original packaging

by distributors, agents, purchasers and the like. The exemption also specifies whether or not the packaging is reusable.

Under the "special permit" process which preceded the new exemption procedures, any shipper who merely wished to purchase and use a packaging manufactured under a special permit and each person who received and wished to reship a hazardous material packaged in accordance with a special permit was required to follow the same procedure as a person who wished to exercise the same authority and perform all of the same functions as the basic special permit holder, i.e., obtain a copy of the special permit and formally register under that permit number with the Office of Hazardous Materials Operations. In converting this "registration" process to the new "parties" procedures, the primary focus was on those prospective applicants who would be seeking the full authority of someone else's exemption. Consequently, becoming a "party" is considerably more involved than was "registering".

The Bureau believes that the new public notice and comment procedures whereby a person may become a full party to an exemption through the constructive adoption of the original applicant's submission are both necessary and appropriate in the case of an applicant who seeks the same status as the holder of the exemption. However, it is not of the same opinion with respect to the incidental users and distributors of packaging materials covered by an exemption. The principal safety objective in their case is to clearly impose upon them a duty to limit their use of the packaging, insofar as transportation is concerned, to the purposes for which it was found qualified during the exemption evaluation process. So long as copies of the packaging exemption which already contain the necessary specifics are made available to users, any additional registration or other formal process accompanying the delivery of those copies is wasteful and of no value in terms of safety.

Accordingly, the Bureau is adding a new § 173.22a to the regulations governing shippers of hazardous materials explicitly setting forth the requirements governing non-exemption holders who ship hazardous materials in exempt packaging which they have received or purchased in the course of business. Under the terms of the new exemption procedures, such packaging will, of course,

be plainly and durably marked "DOT-E" followed by the applicable exemption number (49 CFR Part 107, Subpart B, Appendix B).

Since this amendment grants relief and imposes no additional burden on the persons affected, I find that notice and public procedure thereon are impracticable and that good cause exists for making it effective in less than 30 days after publication in the *FEDERAL REGISTER*.

In consideration of the foregoing, 49 CFR Part 173 is amended by adding a new § 173.22a immediately following § 173.22 to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

(a) Except as provided in paragraph (b) of this section, no person may offer a hazardous material for transportation in a packaging the use of which is dependent upon an exemption issued under Subpart B of Part 107 of this title, unless that person is the holder of or a party to the exemption.

(b) If an exemption authorizes the use of a packaging for the shipment or transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption subject to the terms specified therein. However, no person may use a packaging under the authority of this paragraph unless he maintains a copy of the exemption at each facility where the packaging is being used in connection with the shipment or transportation of the hazardous material concerned. Copies of exemptions may be obtained from the Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Docket Section.

(18 U.S.C. 834, 49 CFR 1.53(g).)

Effective date. This amendment is effective January 26, 1976.

Issued in Washington, D.C., on January 20, 1976.

JAMES T. CURTIS, JR.,
Director, Materials
Transportation Bureau.

[FR Doc. 76-2068 Filed 1-22-76; 8:45 am]